



Docket No.: KCC-14,944

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants: Christopher Peter OLSON, et al.

Serial No.: 09/855,196

Filing Date: 14 May 2001

Title: GARMENT HAVING AN APPARENT  
ELASTIC BAND

Confirmation No. 8184

Customer No. 35844

Group No. 3761

Examiner:  
Jacqueline F. Stephens

**REPLY BRIEF UNDER 37 CFR 41.41**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

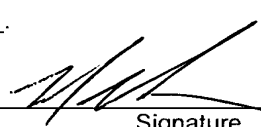
Appellants respectfully submit this Reply Brief in response to the Examiner's Answer mailed 23 August 2007, to supplement the remarks made in the Appeal Brief.

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

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**MATHIS ET AL. IN VIEW OF GLAUG ET AL.**

Appellants' claimed invention, as recited in independent Claims 1, 15, and 27, requires a chassis and an apparent elastic band in the vicinity of at least one of the waist and leg openings. The apparent elastic band includes a color pigment applied to a zone in a targeted elastic material that creates a visible perception of a discrete elastic band on a targeted elastic material where no actual elastic band is present.

As explained in the Appeal Brief, Appellants' claimed invention, through the use of an apparent elastic band, creates the visible perception of a discrete elastic band on a targeted elastic material, even though no such elastic band is present on the targeted elastic material. The added color pigment enhances the visible perception of a discrete elastic band, even though there is no actual elastic band on the targeted elastic material. According to the definition of "targeted elastic material" (discussed in the Appeal Brief), the targeted elastic material also does not include an attached elastic band such as disclosed by *Mathis et al.*

*Mathis et al.* discloses forming an elastic band. The elastic band is formed by laminating an elastic film forming adhesive (col. 5, line 43 - col. 6, line 14) to at least one stretchable layer (col. 4, lines 7-14). The elastic band of *Mathis et al.* is disclosed as being attachable to another laminate or substrate (col. 3, lines 47-59). The elastic band of *Mathis et al.* is disclosed as being particularly useful in being attached to articles such as the foot receiving article of Fig. 4 discussed by the Examiner's Answer at page 5, first paragraph.

The Examiner's Answer, at page 5, first full paragraph, states that one having ordinary skill in the art would have been motivated to modify the invention of *Mathis et al.* with the colored elastics of *Glaug et al.* to create a garment with colored areas for assisting in proper orientation. Referring to the footwear of Fig. 4 of *Mathis et al.*, the elastic cuff 56 is formed from either the two-layer laminate 20 (Fig. 1) or the three-layer laminate 26 (Fig. 2) being secured to the article substrate adjacent the body 62 (col. 7, lines 22-35). The alleged combination of the Examiner's Answer provides a colored elastic band that can be attached to articles.

A colored elastic band secured to an article is not structurally equivalent to Appellants' claimed invention. Thus Appellants again respectfully assert that the *prima facie* case of obviousness is deficient for not providing all claim limitations.

As discussed above and in the Appeal Brief, Appellants' claimed invention is not a colored elastic band that can be attached to various articles. Appellants' claimed invention requires an apparent elastic band that creates a visible perception of a discrete elastic band on a targeted elastic material where no actual elastic band is present. The prior art combination put forth in the Examiner's Answer provides a colored elastic band, and therefore structurally cannot provide Appellants' recited "no actual elastic band."

*Mathis et al.* discloses what Appellant's claimed invention is avoiding, namely a stretchable material/elastic film laminate applied as an elastic band to, for example, the substrate material of footwear article 64 (col. 7, lines 22-35). Pages 4 and 6-7 of the Examiner's Answer states that Appellants' definition of the recited "targeted elastic material" includes references to the process by which the product is made, which are thus not considered. The Examiner's Answer then defines the recited targeted elastic material as "a single elastic material or laminate in an isolated narrow band or region having greater elastic tension than adjacent surrounding regions" (page 7). The Examiner's Answer then argues at page 7 that "[b]ecause this single elastic material or laminate is limited to a band or region, it forms an elastic band, which is disclosed by the prior art." However, by the definition of "targeted elastic material" discussed in the Appeal Brief, the targeted elastic material is an elastic material or laminate that is not, and does not have, a separate and attachable elastic band such as disclosed by *Mathis et al.*

By the statements above, the Examiner's Answer attempts to find an elastic band within the claimed invention in order to make the combination using *Mathis et al.* read on the claimed invention. However, as discussed above and in the Appeal Brief, Appellants' limitations of both "apparent elastic band" and "targeted elastic material" require no elastic band. Therefore, again, the stretchable material/elastic film laminate of *Mathis et al.*, when colored according to *Glaug et al.* and attached to an article chassis according to the rejection, forms a colored elastic band on an article

chassis, which is structurally different from Appellants' claimed invention where "no actual elastic band is on the targeted elastic material."

Neither *Mathis et al.* nor *Glaug et al.* identify an apparent elastic band where no actual elastic band is present. Even if *Mathis et al.* and *Glaug et al.* were combined by one of ordinary skill in the art, the combination according to the Examiner's Answer provides a colored elastic band for attaching to a substrate. As Appellants' claimed invention does not involve an attached elastic band, as in the alleged combination, the alleged combination does not provide the claimed invention. The alleged combination actually provides an elastic band structure that the claimed invention is ultimately avoiding. Therefore, Appellants again respectfully assert that the rejection over the combination of *Mathis et al.* and *Glaug et al.* is not based upon a proper *prima facie* case of obviousness, particularly as all claim limitations are not provided, and the rejection should be reversed by the Board.

For at least the reasons of the Appellants' Appeal Brief supplemented with the remarks herein, Appellants again respectfully request the Board to overturn this rejection.

Respectfully submitted,



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